

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Comcast of Massachusetts/New
Hampshire/Ohio, Inc.
("Comcast")

Plaintiff,

vs.

Maureen & James McDonough

Defendants

MAGISTRATE JUDGE *Cohen*

Case No.: -7 A 11: 42
2004 JUN -7

COMPLAINT FOR VIOLATIONS OF 47

U.S. DISTRICT COURT
DISTRICT OF MASS. § 553

04 11242 REK

RECEIPT #
AMOUNT \$150
SUMMONS ISSUED *yes*
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. *DM*
DATE *6/7/04*

NATURE OF ACTION

1. Plaintiff Comcast of Massachusetts/New Hampshire/Ohio, Inc. ("Comcast") brings this Complaint to redress injuries that it has suffered as a result of Defendants Maureen & James McDonough's (hereinafter the "Defendants") cable television signal piracy.
2. The Defendants' use of one statutorily prohibited electronic device(s) that descrambled and intercepted Comcast's cable television signals violated provisions of provisions of Title 47 U.S.C. § 553 and effectuated a conversion of the Plaintiff's property, its cable television signals.

PARTIES

3. Comcast is a Ohio corporation and maintains a place of business at 6 Campanelli Drive, Andover, Essex County, Massachusetts.
4. The Defendants were and are individuals with a principal residence at 4 Carl Road, Walpole, MA 02081.

JURISDICTION AND VENUE

5. This action is brought pursuant to 47 U.S.C. § 553.
6. This Court has original jurisdiction over this action under 28 U.S.C. § 1331. Venue is proper in the United States District Court in and for the District of Massachusetts pursuant to 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

7. Comcast provides cable television services to subscribers in the Walpole area, and other areas in Massachusetts pursuant to franchise agreements with various municipalities.
8. Comcast is the successor-in-interest to the legal entity that held the prior cable television franchise in this area, and, as such successor, Comcast has the right to pursue the claims set forth herein even if said claims may have accrued during the time that the predecessor-in-interest held the cable television franchise.
9. In order to provide cable television services, Comcast pays fees to programmers for the right to receive programs, mostly by way of interstate radio communications, and transmit their programming over Comcast's system
10. The signals that Comcast transmits over its system are private, proprietary communications not intended for public use.
11. Subscribers pay Comcast based on the level of service they wish to receive.
12. In order to protect its signals and maintain the value of its services, Comcast electronically encodes or scrambles some of its signals so that they must first be decoded by electronic decoding equipment in order to be viewed clearly on a television receiver. The signals Comcast encodes or scrambles include premium channels, such as HBO, Showtime, and Cinemax, for which subscribers pay a separate monthly subscription fee, and pay-per-view events, such as a specific

movie, concert or sporting event, for which subscribers pay a specific one time charge to view each event. Comcast provides subscribers with electronic decoding equipment (hereinafter referred to as "decoders") to decode these signals. Comcast programs these decoders so that a subscriber may only view that level of service, which he or she has purchased.

13. On and before June 7, 2001, the Defendants were in possession of a certain illegal, descrambling device(s).
14. The descrambling device(s) was capable of defeating Comcast's encoding and scrambling technology.
15. The Defendants used the descrambling one to receive, without authorization, scrambled or encoded programming and services offered over Comcast's system.
16. By using the unauthorized and illegal descrambling device(s), the Defendants were able to view Comcast's highest level of cable television programming and service, including premium channels and pay-per-view events, while only paying for a lower level of service.

COUNT I
(Violation 47 U.S.C. § 553)

17. Comcast realleges and incorporates by reference paragraphs 1 through 16 above.
18. The Defendants' conduct violated Title 47 U.S.C. § 553(a).
19. Comcast is a person aggrieved by the Defendants' violation of Title 47 U.S.C. § 553 and is authorized to institute this action pursuant to Title 47 U.S.C. § 553(c)(1).
20. The cable transmissions that make up Comcast's signal are communications services offered over a cable system and, as such, are protected by Title 47 U.S.C. § 553.

21. The Defendants knowingly and willfully violated Title 47 U.S.C. § 553.
22. Comcast did not authorize or consent to the Defendants' interception and use of its cable transmissions.
23. The Defendants' violations have injured Comcast's ability to generate revenue by depriving Comcast of payment for its programming.

COUNT II

(Conversion)

24. Comcast realleges and incorporates by reference paragraphs 1 through 23.
25. The Defendants exercised dominion and control over the Comcast's property, its cable television signals, without authorization or legal right to do so.
26. The Defendants' conduct was willful, intentional, malicious, and wrongful, with the intent to deprive the Plaintiff of the right to possession of its cable television signals.
27. As a direct and proximate result of the Defendants' conversion of the Plaintiff's signals the Plaintiff has suffered monetary damages; accordingly, the Defendants are liable for all of the Plaintiff's damages.

WHEREFORE, Comcast prays for Judgment against the Defendants and requests that the Court grant it the following relief:

1. Statutory damages of \$10,000.00 for each violation of 47 U.S.C. § 553(a), totaling \$10,000.00.
2. Money damages in favor of the Plaintiff for all damages the Plaintiff has suffered as a result of the Defendants' conversion;
3. Comcast's attorney's fees and costs in prosecuting this lawsuit as provided for by

47 U.S.C. 553(c)(2)(C);

4. The issuance of a permanent injunction pursuant to provisions of 47 U.S.C. § 553 utilizing the following language or language of a similar nature:

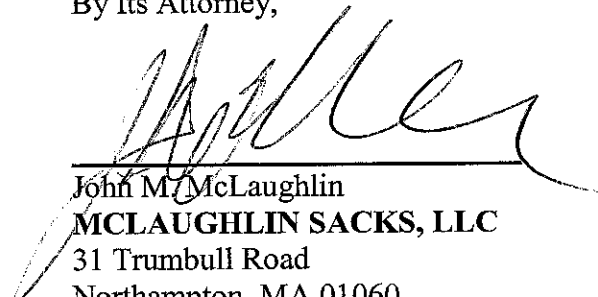
“The Court hereby enjoins the Defendants, the Defendants’ respective agents, servants, employees and any person or entity controlled directly or indirectly by the Defendants or acting on the Defendants’ behalf from the further use and/or distribution of electronic equipment designed for the unauthorized interception of signal in violation of provisions of Title 47.”

5. Post judgment interest pursuant to 26 U.S.C. § 1961; and
6. Such other and further relief as this Court may deem just and proper.

Respectfully Submitted for the Plaintiff,
Comcast of Massachusetts/New Hampshire/Ohio,
Inc.

By Its Attorney,

Date


John M. McLaughlin
MCLAUGHLIN SACKS, LLC
31 Trumbull Road
Northampton, MA 01060
Telephone: (413) 586-0865
BBO No. 556328

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Comcast of Massachusetts/New Hampshire/Ohio, Inc. vs. Maureen & James McDonough

FILED
IN CLERKS OFFICE

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

2004 JUN -1 A 11:42

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- XX II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

U.S. DISTRICT COURT
DISTRICT OF MASS.Also complete AO 120 or AO 121
for patent, trademark or copyright cases

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(S)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

None

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
YES ☐ NO ☒

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES ☐ NO ☒

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES ☐ NO ☒

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES ☐ NO ☒

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES ☒ NO ☐

1. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?
EASTERN DIVISION ☒ CENTRAL DIVISION ☐ WESTERN DIVISION ☐
2. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?
EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME John M. McLaughlinADDRESS MCLAUGHLIN SACKS, LLC, 31 Trumbull Rd., Northampton, MA 01060TELEPHONE NO. (413) 586-0865

The JS-44 civil cover sheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

Comcast of Massachusetts/New Hampshire/Ohio, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Norfolk
(EXCEPT IN U.S. PLAINTIFF CASES)

John M. McLaughlin
McLaughlin Sacks, LLC, 31 Trumbull Road
Northampton, MA 01060 (413) 586-0865

Maureen & James McDonough

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Norfolk

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF
(For Diversity Cases Only) AND ONE BOX FOR DEFENDANT)

PTF DEF

PTF DEF

| | | | | |
|---|---|---|---|---|
| Citizen of This State | 1 | Incorporated or Principal Place of Business In This State | 4 | 4 |
| Citizen of Another State | 2 | Incorporated and Principal Place of Business In Another State | 5 | 5 |
| Citizen or Subject of a Foreign Country | 3 | Foreign Nation | | 3 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

| IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY) | | | | | |
|---|-------------------------------------|--|--|-----------------------------------|---|
| CONTRACT | TORTS | | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
| 10 Insurance | PERSONAL INJURY | PERSONAL INJURY | 10 Agriculture | 122 Appeal 28 USC 158 | 400 State Reapportionment |
| 20 Marine | 110 Airplane | 362 Personal Injury - Med. Malpractice | 20 Other Food & Drug | 423 Withdrawal 28 USC 157 | 410 Antitrust |
| 30 Miller Act | 115 Airplane Product Liability | 65 Personal Injury - Product Liability | 25 Drug Related Seizure of Property 21 USC 881 | PROPERTY RIGHTS | 430 Banks and Banking |
| 40 Negotiable Instrument | 320 Assault Libel & Slander | 368 Asbestos Personal Injury Product Liability | 30 Liquor Laws | | 450 Commerce/ICC Rates/etc. |
| 50 Recovery of Overpayment & Enforcement of Judgment | 330 Federal Employers Liability | PERSONAL PROPERTY | 40 R.R. & Truck | 320 Copyrights | 460 Deportation |
| 51 Medicare Act | 340 Marine | | 370 Other Fraud | 350 Airline Regs. | 330 Patent |
| 52 Recovery of Defaulted Student Loans (Excl. Veterans) | 345 Marine Product Liability | 371 Truth In Lending | 360 Occupational Safety/Health | 340 Trademark | 510 Selective Service |
| 53 Recovery of Overpayment of Veteran's Benefits | 350 Motor Vehicle | 380 Other Personal Property Damage | 190 Other | SOCIAL SECURITY | 350 Securities/Commodities/Exchange |
| 160 Stockholders Suits | 355 Motor Vehicle Product Liability | 385 Property Damage Product Liability | LABOR | | 375 Customer Challenge 12 USC 3410 |
| 190 Other Contract | 360 Other Personal Injury | PRISONER PETITIONS | 710 Fair Labor Standards Act | 351 HIA (1395ff) | 391 Agricultural Acts |
| 195 Contract Product Liability | | | 20 Labor/Mgmt Relations | 52 Black Lung (923) | 392 Economic Stabilization Act |
| | | | | 63 DIWC/DIWW(405(g)) | 393 Environmental Matters |
| | | | | 64 SSID Title XVI | 394 Energy Allocation Act |
| | | | | 65 RSI (405(g)) | 395 Freedom of Information Act |
| REAL PROPERTY | CIVIL RIGHTS | | 730 Labor/Mgmt Reporting & Disclosure Act | FEDERAL TAX SUITS | 396 Appeal of Fee Determination Under Equal Access to Justice |
| 10 Land Condemnation | 441 Voting | 510 Motions to Vacate Sentence | 740 Railway Labor Act | | 870 Taxes (U.S. Plaintiff or Defendant) |
| 20 Foreclosure | 442 Employment | HABEAS CORPUS: | | 871 IRS - Third Party 26 USC 7609 | 990 Other Statutory Actions |
| 30 Rent Lease & Ejectment | 443 Housing Accommodations | 530 General | 90 Other Labor Litigation | | |
| 40 Torts to Land | 444 Welfare | 335 Death Penalty | | | |
| 45 Tort Product Liability | 440 Other Civil Rights | 540 Mandamus & Other | 791 Empl Ret Inc. Security Act | | |
| 290 All other Real Property | | 550 Civil Rights | | | |
| | | 55 Prison Condition | | | |

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

X 1 Original
Proceeding

2 Removed from
State Court

3 Remanded from
Appellate Court

Reinstated or
Reopened

Transferred from
another district
(specify)

**Multidistrict
Litigation**

Appeal to District
Judge from
Magistrate
Judgment

VI. CAUSE OF ACTION (CITE THE U. S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY V

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P 23

DEMAND \$ 10.000.00

CHECK YES only if demanded in Complaint

JURY DEMAND: YES ☐ NO ☒

VIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE

DOCKET NUMBER

DATE _____

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT.

APPLYING IFR

JUDGE

MAG. JUDGE